IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 18537 of 2004

Between:

1 Mohammed Fayazuddin, S/o Mohammed Muneeruddin,
R/o Yerraram Village, Dindi Mandal, Nalgonda,
Nalgonda District
2 Mohd.Burhanuddin, S/o Abdul Khader,
R/o Yerraram Village, Dindi Mandal, Nalgonda,
Nalgonda District. **..... PETITIONER(S)**

AND

1 The Chief Executive Officer, A.P.State Wakf Board, Haj House Building, Opp.Public Gardens, Nampally, Hyderabad
2 The Inspector Auditor Wakfs, Nalgonda, Nalgonda District
3 The D.R.O., Nalgonda, Nalgonda District
4 The Mandal Revenue Officer, Devarkonda Mandal, Nalgonda District
5 A.P.State Wakf Board rep. by its CEO, Haj House, Hyderabad

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the first respondent in issuing proceedings No.F.No.46/NLG/K/2004 dated 29-09-2004 as being illegal, arbitrary, unconstitutional, without jurisdiction, in excess of authority and breach of principles of natural justice and violative of the provisions of the Wakf Act, 1995 and set aside the same and consequently direct the respondents not to interfere with the petitioners functioning as the Mutawallis of the Wakf Institution 'Dargah Hzt.Haji Darvesh Quadri Rh., situated at Deverkonda, Nalgonda District.

Counsel for the Petitioners: MR.S.NIRANJAN REDDY

Counsel for Respondent Nos.1, 2 and 5: Mr.A.M.Qureshi

Counsel for Respondent Nos.3 and 4:GP FOR REVENUE

The Court at the stage of admission made the following Order:

This writ petition is filed seeking a declaration that the proceedings of the first respondent dated 29-09-2004, as arbitrary and illegal.

The petitioners claim to be the Muthawallis of the Dargah Hzt. Haji Darvesh Quadri, situated at Deverkonda Mandal, Nalgonda District. It is stated that in recognition of the services rendered by their forefather and ancestor, Shaik Makdoom, a 'Munthakab' was issued in his favour in respect of the property admeasuring Ac.26.05 guntas and Ac.5.15 guntas in survey Nos.197, 198, 375, 376, 374, 380, 382 and 576 in 1299 Fasli for rendering the services to the above said institution. It is further stated that while the father of the first petitioner was continuing as the Muthawalli, the property in question was notified as Wakf property under the Wakf Act 1995 (for short 'the Act') by publication in the Gazettee No.A, dated 22-09-1990. After the death of his father, the petitioners have succeeded as Muthawallis and they obtained a legal heir certificate from the Mandal Revenue Officer and they continued to administer the property in question. While so, the impugned proceedings dated 29-09-2004 have been issued by the first respondent under Section 65(1) of the Act, whereunder, the institution in question, together with landed properties to an extent of Ac.26.05 guntas, has been taken under the direct management of the Wakf Board with immediate effect. The said proceedings are under challenge in this writ petition.

At the outset, it is to be noted that against the order impugned, an alternative remedy is available under Section 84 of the Act and without exhausting the said alternative remedy, the petitioners cannot maintain this writ petition.

In the circumstances, without expressing any opinion on merits, the writ petition is dismissed granting leave and liberty to the petitioners to work out the appropriate remedy as available under the statute, raising all the grounds as available under law. No costs.

11-10-2004

kdl

To

1 The Chief Executive Officer, A.P.State Wakf Board, Haj House Building, Opp.Public Gardens, Nampally, Hyderabad
2 The Inspector Auditor Wakfs, Nalgonda, Nalgonda District
3 The D.R.O., Nalgonda, Nalgonda District
4 The Mandal Revenue Officer, Devarkonda Mandal, Nalgonda District
5 The C.E.O. A.P.State Wakf Board, Haj House, Hyderabad

6 Two C.Cs. to the Government Pleader for Revenue, High Court Buildings, A.P., Hyderabad, (OUT).

7 Two C.D. Copies.